

August 31, 2012

**VIA HAND DELIVERY (UNREDACTED)  
AND ECFS (REDACTED)**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, Imposition of a Freeze on the Filing of Competing Renewal Applications for Certain Wireless Radio Services and the Processing of Already-Filed Competing Renewal Applications, WT Docket No. 10-112***

**REQUEST FOR CONFIDENTIAL TREATMENT OF AGREEMENT  
FOR RESOLUTION OF COMPETING APPLICATIONS**

Dear Ms. Dortch:

Green Flag Wireless, LLC, CWC License Holding, Inc., Corr Investments I, LLC, James McCotter, and Snapline Communications, LLC (collectively, "Competing Applicants") and AT&T Inc. on behalf of its 2.3 GHz Wireless Communications Services ("WCS") licensee subsidiaries, BellSouth Mobile Data, Inc., New Cingular Wireless PCS, LLC, and SBC Telecom, Inc., (together with AT&T Inc., "AT&T," and collectively with the Competing Applicants, "Parties") hereby request confidential treatment for certain portions of their Agreement for Resolution of Competing Applications ("Agreement") and the discussion of those portions in this letter. The Parties are filing the Agreement as an attachment to their Joint Request for Approval of Agreement for Resolution of Competing Applications, which is attached to this letter.

Specifically, the Parties request confidential treatment for the following sections of the Agreement which describe future business plans and associated dates:

- Paragraphs 7.a and 7.b in the entirety;
- Paragraph 9.a in the entirety;
- Paragraph 9.d in the entirety; and
- the date provided in Paragraph 23.

These sections of the Agreement contain highly sensitive commercial information about the Parties, release of which would place the Parties at a significant competitive disadvantage. FOIA Exemption 4 requires a federal agency to withhold from public disclosure confidential or

privileged commercial and financial information of a person unless there is an overriding public interest requiring disclosure.<sup>1</sup> The Commission has a longstanding policy of protecting the confidential commercial information of its regulatees under this provision.<sup>2</sup> Treating the portions of the Agreement that reveal future business plans as confidential and withholding those portions from public inspection is consistent with Commission precedent.<sup>3</sup>

Two lines of cases have evolved for determining whether agency records fall within Exemption 4. Under the first line, *Critical Mass*, commercial information that is voluntarily submitted to the Commission must be withheld from public disclosure if such information is not customarily disclosed to the public by the submitter.<sup>4</sup> For material that does not meet the *Critical Mass* test, *National Parks* establishes a two-part test for determining if information qualifies for withholding under Exemption 4.<sup>5</sup> The first prong asks whether disclosing the information would impair the government's ability to obtain necessary information in the future. The second prong asks whether the competitive position of the person from whom the information was obtained would be impaired or substantially harmed. If the information meets the requirements of either prong, it is exempt from disclosure under Exemption 4.

Whether under *Critical Mass* or *National Parks*, the information addressing future business plans provided by the Parties falls within Exemption 4. These portions of the Agreement contain sensitive commercial and financial data that can be used by competitors and others to the disadvantage of Parties. It is for this reason that they customarily are not released to

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<sup>1</sup> 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

<sup>2</sup> See *Examination of Current Policy Concerning the Treatment of Confidential Info. Submitted to the Comm'n*, Report and Order, 13 FCC Rcd. 24816, 24822 ¶ 8 (1998) (stating "the Commission generally has exercised its discretion to release publicly information falling within FOIA Exemption 4 only in very limited circumstances, such as where a party placed its financial condition at issue in a Commission proceeding, or where the Commission has identified a compelling public interest in disclosure.").

<sup>3</sup> See, e.g., *Wireless Telecomms. Bureau Mobility Div. Approves Settlement Agreement & Dismisses Application for Review*, Public Notice, 19 FCC Rcd. 8532 (WTB MD 2004) (applying standards of Exemption 4 of the FOIA to settlement agreement); *WorldCom, Inc. & Its Subsidiaries (Debtors-in-Possession), Transferor, & MCI, Inc., Transferee, Applications for Consent to Transfer &/or Assign Authorizations & Licenses*, Order, 18 FCC Rcd. 24385, 24386 ¶ 6 (WTB CWD 2003) (noting that "courts have recognized that settlement agreements may constitute privileged information under Exemption 4 of the Freedom of Information Act") (citing *M/A-Com Info. Sys., Inc. v. U.S. Dep't of Health & Human Servs.*, 656 F. Supp. 691 (D.D.C. 1986)); *CBS Commc'ns Servs., Inc. Licensee of Private Operational Fixed Microwave Station WEH913, Miramar, P.R. & Centennial Wireless PCS License Corp. Licensee of B Block PCS Station KNLF250, P.R.-U.S.V.I. MTA*, Memorandum Opinion and Order, 13 FCC Rcd. 16431, 16432 ¶ 5 (granting "request for confidentiality as to those portions of the agreement that reflect payment of funds").

<sup>4</sup> *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) ("*Critical Mass*").

<sup>5</sup> *Nat'l Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) ("*National Parks*").

the public.<sup>6</sup> In this case, the Parties have agreed to keep the terms of the Agreement, including but not limited to, the amounts paid to the Competing Applicants, confidential.<sup>7</sup> Protecting the portions of the Agreement that contain the most sensitive information is of vital importance to the Parties and to the public interest in fair competition.

**[Begin Confidential Information]**

**[End**

**Confidential Information]**

In addition, compelled public disclosure of the most sensitive portions of the Agreement plainly would impair the Commission's ability to obtain similar information in the future.<sup>8</sup> It would chill industry incentives to provide as much detail to the Commission in future proceedings of all types. It would thus hamper the general ability of the Commission to conduct such proceedings and to rely on the cooperation of relevant parties to obtain documents and information necessary for reasoned decision-making and for ensuring compliance with the statutes and rules enforced by the Commission. It would, in short, undermine the agency's "effective execution of its statutory responsibilities."<sup>9</sup>

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<sup>6</sup> See, e.g., *Wireless Telecomms. Bureau Mobility Div. Approves Settlement Agreement & Dismisses Application for Review*, Public Notice, 19 FCC Rcd. 8532 (WTB MD 2004); *WorldCom, Inc. & Its Subsidiaries (Debtors-in-Possession), Transferor, & MCI, Inc., Transferee, Applications for Consent to Transfer &/or Assign Authorizations & Licenses*, Order, 18 FCC Rcd. 26338, 26340-41 ¶¶ 7-8 (WTB MD 2003).

<sup>7</sup> See *Parker v. BLM*, 141 F.Supp. 2d 71, 79 (D.D.C. 2001) (supporting withholding because, among other factors, defendants did not customarily disclose the withheld documents).

<sup>8</sup> See *Wireless Telecomms. Bureau Mobility Div. Approves Settlement Agreement & Dismisses Application for Review*, Public Notice, 19 FCC Rcd. 8532, 8533 (WTB MD 2004) (finding that public disclosure of settlement agreement "could impair the Commission's ability to obtain necessary information in the future").

<sup>9</sup> *9 to 5 Org. for Women Office Workers v. Board of Governors*, 721 F.2d 1, 11 (1st Cir. 1983); see also *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp. 2d 19, 30 (D.D.C. 2000) ("The government has a compelling interest in ensuring that the information it receives is of the highest quality and reliability, and disclosure of potentially sensitive commercial and financial information, even where submissions of information are mandatory, would jeopardize the Bank's ability to rely on any such information. . . , thereby hindering the Bank's fulfillment of its statutory purpose."); *Africa Fund v. Mosbacher*, No. 92 CIV 289, 1993 WL 183736 at \*7 (S.D.N.Y. May 26, 1993) ("Disclosure would . . . impinge upon the agency's receipt of substantial information that potential exporters voluntarily submit when seeking export licenses and that the agency finds invaluable in making policy and maintaining effective export controls.").

**REDACTED, FOR PUBLIC INSPECTION**

For these reasons, the portions of the Agreement identified herein and the discussion of those portions included above should be treated as confidential under both the Commission's rules and precedent and withheld from public inspection. In the event that any person or entity requests access to the aforementioned portions of the Agreement or the unredacted version of this letter or seeks to make them part of the public record, the Parties request to be notified immediately so that they can oppose such request or take other action as necessary to safeguard their interests.

Respectfully submitted,

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